

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

DIANE TYLER,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Civil No. 09-232-ST

ORDER

Defendant.

STEWART, Magistrate Judge:

Plaintiff's Motion for Approval of Attorneys Fees Pursuant to 42 USC § 406(b) (docket #40) is GRANTED in the sum of \$11,333.75, an amount that is 25% of the retroactive benefits

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awarded to plaintiff.

Because plaintiff's attorney also has been awarded fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 USC § 2412, in the sum of \$7,100.00 (docket #39), plaintiff's attorney may retain only the larger of the two fees received. When issuing the payment for fees under 42 USC § 406(b), defendant is directed to subtract any amount previously paid to plaintiff's attorney for fees pursuant to the EAJA and to send to plaintiff's attorney the net balance, minus any user fee. Any amount withheld (including the EAJA fee offset) after all administrative and court attorneys fees are paid should be released to plaintiff.

DATED this 28<sup>th</sup> day of October, 2010.

s/ Janice M. Stewart \_\_\_\_\_  
Janice M. Stewart  
United States Magistrate Judge